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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942

No. 75

THE CITY OF NORTH CHICAGO, A MUNICIPAL CORPORATION, JOHN P. DROMEY, ANTON MACROWSKI, JR., WILLIAM ORLOWSKI, PETER CZAJKOWSKI, BENJAMIN NEWNHAM, LESLIE CALDER, JOSEPH McKILLEN, LOUIS ROSE, CASIMIR ZDANOWICZ AND WALTER KOZIOL,

Petitioners,

vs.

THE MACCABEES, A CORPORATION, THE MARYLAND CASUALTY COMPANY, A CORPORATION, AND GUST F. SANTRY,

Respondents.

BRIEF OF RESPONDENT, THE MACCABEES, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

EDWARD J. JEFFRIES, JR.
DAVID A. HERSH
Counsel for Respondent.
THE MACCABEES

TABLE OF CASES

INDEX

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I

Statement of the Case

Your respondent respectfully submits that the petitioners statement of the case does not completely and adequately

reflect the case stated by the Bill of Complaint filed by the respondent.

In the first place, the case is here only because, although the trial court itself believed the respondent entitled to relief in some respects (R. 246), was at most in doubt as to the rest of it, the lower court requested the Court of Appeals to tell it whether the respondent would be entitled to all the relief requested before the trial court should proceed to hearing of the issue raised by the Bill (R. 264-6, 268-9).

In the second place, in all the years since 1924 the respondent has been trying to make the petitioners and the other defendants take the steps required of them to make the sewer involved conform to the ordinance and contract, so that the installments of special assessments and the bonds issued to anticipate them, will be collectible (R. 17-19). The petitioners and other defendants on the other hand, have been refusing to take and have confederated together to prevent the taking of those steps while, at the same time insisting that the respondent is entitled to no relief for the sole and only reason that none of those steps have been taken (R. 10-19, 23-24).

Some of the relief sought by the respondent as a holder of some of the special assessment bonds is especially given to the respondent and others similarly situated by statute for the purpose of enabling the bond holders to enforce mandatory obligations imposed by the Local Improvements Act for their benefits. One phase of the relief under the Act is a mandatory injunction compelling the filing of a certificate of cost and completion in the County Court in the county in which the improvement was initiated (R. 19-20). Until such a certificate has been filed and an order entered on it by the County Court, the entire special assessment proceeding stands in status quo with none of the installments of assessments and none of the bonds issued to anticipate them, becoming delinquent. The petitioners and the other defendants are seeking to perpetuate this condition, even though the sewer itself, as the result of secret and unlawful changes made by the petitioners, has been in constant use and rendering service to the locality without cost since 1924 (R. 15).

In the third place, the respondent has pointed out in its Bill of Complaint that the other defendants and the petitioners

confederated together for the purpose of cheating and defrauding the respondent by making secret changes in the sewer consisting of:

(1) Installing pumps so that the sewer which was supposed to be a gravity sewer, but which would not function as such, would function as a force flow sewer (R. 15-16).

(2) Connecting the sewer, as so changed, with the sewer system of the City of Waukegan under an arrangement officially entered into by the two cities for that purpose, instead of connecting the sewer with the sewer system of the City of North Chicago as the ordinance required (R. 12, 14-19, 24, 27, 29).

In the fourth place, a reading of the Bill of Complaint indicates that by the acts of the other defendants and the petitioners, the original sewer as provided by the ordinance was *abandoned* and an entirely different project was set up in its place. The abandonment of the project and the confederation of the petitioners and the other defendants in preventing the efforts of the respondent from requiring the completion of the project as originally designed has prevented the validation of the respondent's bonds *causing not only injury to the respondent in that respect but loss of interest from 1924 to such time that the bonds may be validated and; also loss to the respondent of assessments already collected but unaccounted for by the City of North Chicago (R. 26) and; also damages to the respondent caused by the defendants in bringing this and other proceedings in order to enforce the provisions of the Local Improvements Act to a proper completion of the project as well as punitive damages for the conspiracy against the respondent.*

A review of the pertinent sections of the Local Improvements Act (R. 21, 19, 20, 23, 25) will reveal its total inadequacy to grant respondent full, adequate, and complete relief necessary to make it whole. A reading of the respondent's Bill of Complaint will indicate that not only is it entitled to have its bonds validated but as mentioned in the Statement of the Case hereinbefore set forth, its relief will not be full and complete unless it is given consideration on the other elements of damages to which it is entitled. *The Improvements Act can only go so far as to validate the bonds held by the respondent.*

The respondent submits that the relief thereunder falls far short of affording the respondent a full, complete, and adequate remedy. Even the enforcement of the remedy for validation of the bonds is uncertain. There is no remedy under the Act for accounting of assessments collected nor for damages for loss of interest since 1924 nor for damages for enforcement of relief nor punitive damages for conspiracy against respondent.

A reading of the respondent's bill will indicate that the gist of its complaint is not as the petitioners claim (a mere failure on the part of the City of North Chicago to comply with the Local Improvements Act) but rather the unlawful getting together of the petitioners and other defendants to defeat through fraudulent means the respondent in its property rights.

As appropriately stated in the opinion below:

> "The gravamen of the plaintiff's cause is not the mere existence of an unsatisfied statuatory right; it is the manner of the defendant's disregard of these alleged rights which prompt the plaintiff to seek the aid of a Federal Court of Equity in putting to an end the defendant's alleged conspiracy to cheat and defraud ***."

REPLY TO PETITIONERS' JURISDICTIONAL STATEMENT

Respondent disagrees with the petitioners, that there exists in this case a basis for appeal to this court on the four propositions in petitioners' "Reasons for granting the writ."

On proposition No. 1 in petitioners' "Reasons for granting the writ" respondent denies that a conflict of opinion exists between the lower court in this case and the Circuit Court of Appeals for the Fifth Circuit in the case of Fineran v. Baily 2 Fed. (2nd) 363. That case was merely authority for the proposition *that where nothing else is involved* a district court will decline to issue a mandatory injunction, first because political rather than property rights were involved; second, as stated by the court on page 363, *the appellants had a complete remedy in the State Courts;* and thirdly, there was no provision under the state statutes in that case for mandatory injunction, whereas, in this case under Section 90 of the Local

Improvements Act relief in the form of a mandatory injunction is *specifically provided for the benefit of the bondholders.*

In this case more is involved than a request for mandatory injunction. As hereinafter pointed out, respondent's relief at law in the State Court under the Local Improvements Act is not adequate, is uncertain, does not render complete relief, does not afford relief from fraud and involves property rights as distinguished from purely political matters.

Answering point No. 2 of petitioners' "Reasons for granting the writ" the conclusion drawn by the petitioners that the respondent could obtain equitable relief in the Federal Court not obtainable in the state court is wholly unwarranted. As more particularly pointed out in the respondent's main argument under IIIA (3) herein, your respondent respectively contends that had it filed its bill in the State court in chancery it would have been entitled to all of the relief requested of the Federal court in this case. The respondent, because of diversity, had the right to request relief of the Federal court.

Answering point 3A of petitioners' "Reasons for granting the writ" your respondent submits that the same is fully answered in respondent's main argument under IIIA (3), (4), herein.

Answering point 3B of petitioners' "Reasons for granting the writ" this objection like the other objections raised by the petitioners is premised upon the erroneous assumption that the remedy at law under the Local Improvements Act would afford respondent full and complete relief. That it will not is obvious as more particularly pointed out in the respondent's "Statement of the Case" herein.

Answering point 3C of petitioners' "Reasons for granting the Writ" here again the petitioners assume that the remedy at law in the State court is adequate and complete. That it is not, your petitioners again refer to respondent's "Statement of the Case" wherein the inadequacy of the legal remedy under the local Improvements Act is pointed out.

Petitioners' point 3D is not at all well taken for the reason that the case of Pecheur Lozenge Co., Inc. v. National Candy Company, Inc. decided March 30, 1942 and reported in Volume 86 No. 11 of the Supreme Court Law Edition on page 739, did not involve questions pertaining to rights of bondholders

of Local Improvements bonds. That case involved a question whether the Bill of Complaint stated a cause of action under the copyright law. This court held in that case that the only cause stated was for unfair competition and common law (trade mark infringement) to which this court said local law applies. The decision of the lower court in this case in no way conflicts with the Pecheur decision. The lower court in this case in no way departed from or conflicted with the local law of Illinois. The decision of the lower court in this case fundamentally held that a Federal court of equity would grant relief where the remedy at law was uncertain, incomplete, inadequate, and to relieve from fraud. As pointed out herein—IIIA (3)—If the respondent had filed its Bill of Complaint in the State court in chancery it would have stated a cause for relief in the State court. This being a diversity case, the respondent properly selected the Federal court as it had the right to do for relief.

Point 4A is entirely unwarranted. There is no indication in the decision of the lower court that it based the same on matters not in the record. As a matter of fact the respondent's Bill of Complaint contains ample allegations to sustain the opinion of the lower court. A review of the same herein would serve no purpose but to encumber this brief. Review of the allegations of the Bill contained in the record will fully answer petitioners' point.

Petitioners' point 4B involving the case of Tolman v. Clark County Drainage System 52 Fed 2nd page 226 is not at all in conflict with the decision of the lower court. That case involved the Wisconsin law covering drainage districts. That law is much different in many respects from the Local Improvements Act in this case. Under the decisions of the Wisconsin courts disclosed in that case, involving the construction of the Wisconsin Drain Law the Circuit Court, wherein the drainage district proceedings were pending, was *determined to have full jurisdiction and power to grant all relief in that case.*

That case would only be similar to the case at bar if the County Court in this case had jurisdiction to grant all of the relief sought by respondent in its suit brought in the District court. As pointed out in IIIA (2) herein, the County Court does not have jurisdiction in chancery nor does it have the power to issue a mandatory injunction nor does it have juris-

diction to relieve from fraud or to compel an accounting by a trustee.

III

Summary of Argument for Not Granting Writ of Certiorari

The Circuit Court of Appeals was correct in holding this is a proper case for relief in a Federal Court of Equity because:

A

A Federal Court in equity will grant relief in a proper case where jurisdictional requisites exist and where the remedy in the State Court at law is uncertain, inadequate, incomplete.

B

Granting relief to respondent as prayed for will not work a conflict between the State and Federal Courts.

ARGUMENT

A

The petitioners' request for Writ of Certiorari centers mainly upon the proposition advanced by the petitioners that the respondent has a remedy at law in the State court under the Local Improvements Act and that the respondent should be relegated to that forum for relief and for that reason the Federal court should decline to entertain jurisdiction even though other federal jurisdiction requisites are present. Interwoven in this same question is the petitioner's argument that because of the remedy in the State court, a Federal court should decline to exercise jurisdiction, otherwise there would exist a possible conflict between a State court or Federal court.

The respondent in answering thereto submits that this is not and could not constitutionally be made a matter exclusively for the State court because:

(1) A Federal court in equity has jurisdiction when there is no legal remedy available on the law side of the Federal court, all of the other jurisdictional requisites being present.

(Respondent maintains that there is no legal remedy available to it on the law side of the Federal court.)

In *Risty v. Chicago, R. I. & Pac. Ry. Co.*, 270 U. S. 378 (see C. C. A. decision in 297 Fed. 710, and Dist. Ct. decision in 282 Fed. 364), the Statutes of the State of South Dakota gave to the injured party a remedy in the State courts just as the defendants contend we have a remedy in the State courts here. All three of the courts hearing that case decided against this contention, the Supreme Court saying:

> "The remedy by appeal to the State court under §8469 does not appear to be coextensive with the relief which equity may give. In any event, it is not one which may be availed of at law in the Federal courts, and *the test of equity jurisdiction in a Federal court is the inadequacy of the remedy on the law side of that court and not the inadequacy of the remedies afforded by the State courts. Smyth v. Ames*, 169 U. S. 466; *Chicago, B. & Q. R. R. Co. v. Osborne, supra.*" (Italics ours)
>
> * * * *
>
> "The legal remedy under the state law being uncertain, the Federal Court has jurisdiction in equity to enjoin the assessment. *Dawson v. Kentucky Distilleries Co.*, 255 U. S. 288."

It is significant that this case was a suit for injunction to enjoin a drainage assessment in the Board of County Commissioners of one of the counties in South Dakota. The holding is also important here in that it announces as a rule of law that even though the State Statutes give a remedy and such remedy may be adequate, unless there is an adequate remedy on the law side of the Federal court, the Federal court will take jurisdiction in chancery.

The language of the Circuit Court of Appeals in that case (297 Fed. 710, 718) is:

> "A remedy in the State court that cannot be pursued in the Federal court is not an adequate remedy."

Thus, if the petitioners pursue their argument that we have no remedy in the Federal court because we are given one in the State court under the Local Improvements Act in the

County Court, of which we cannot avail ourselves in the Federal court, the argument automatically defeats itself, as in that event we are entitled to the relief in chancery which we are here asking. Within the meaning of the *Risty* case the Federal Court could take jurisdiction of the entire State court matter, the proceeding in the County Court, follow it through, and see that justice is done.

In the *Singer Sewing Machine Co. v. Benedict,* 229 U. S. 481, 486, it was held that the collection of Colorado taxes will not be enjoined by a Federal court where the *state law* gave an adequate remedy *which would be available in the Federal court,* the court saying (p. 486):

> "The Colorado statute gave to one who should pay illegal taxes a right to recover back from the county the money so paid. *This right was one which could be enforced by an action at law in the Circuit Court, no less than in the State courts, if the elements of federal jurisdiction such as diverse citizenship and the requisite amount in controversy, were present. Ex parte Mc Niel* 13 Wall, 236, 243; *United States Mining Co. v. Lawson,* 134 Fed. Rep. 769, 771." (Italics ours)

In *C. B. & Q. R. Co. v. Osborne,* 265 U. S. 14 a bill to enjoin the collection of state taxes was upheld. The argument was made that the taxpayer had an adequate remedy at law in the State court as an appeal of sorts was allowed from the order fixing tax. The court here said through Mr. Justice Holmes (p. 16):

> "If an action to recover the payment were allowed the suit might be brought in the courts of the United States under the usual conditions as well as in those of the state. (Citing *Singer Sewing Machine Co. v. Benedict,* 229 U. S. 481, 486 discussed above.) But the writ of error can be sued out only in the state, *and a remedy in the State courts only has been held not to be enough.*" (Italics ours)

Justice Holmes cites *Smyth v. Ames,* 169 U. S. 466, 516; *St. L.-S. F. Ry. Co. v. McElvain,* 253 Fed. 123, 136 and *Franklin v. Nevada-California Power Co.,* 264 Fed. 643, 645, all of which hold that Federal courts have jurisdiction in chancery

in spite of the existence of a statutory remedy in the State court, even if the State court remedy is adequate, unless the State court remedy is also open in the Federal court.

(2) A Federal court has jurisdiction where the remedy in the State court is uncertain, all of the other jurisdictional requisites being present.

The respondent maintains that even as to part of the relief it claims to be entitled to, i.e. mandatory injunction to require the Board of Local Improvements to file the certificate of completion in the County Court, there is grave doubt whether the County Court has jurisdiction to issue a writ of injunction or mandamus. In its Bill of Complaint the respondent alleges that the remedy in the State court is uncertain (R. 14, 24) and the County Court refused to assume that it had the power to punish for contempt the failure of the Local Improvements Board to file the certificate of completion (R. 18).

As a matter of fact, in the County Court the city contended that that court had no jurisdiction to issue a writ of mandamus or injunction. The constitution of the State of Illinois of 1870, Section 18, Article 6 entitled "County Courts" provides that they shall be "courts of record" having jurisdiction in probate and apprentice matters "and in proceedings for the collection of taxes and assessments and such other jurisdiction as shall be provided by general law." But there is no delegation of chancery or mandatory powers. The statutory provisions are found in the County Court Act of 1874 as amended (Ill. Rev. St. 1941, Ch. 37, Sec. 171-177 and 282-296) the section regarding jurisdiction in Section 7 (Ill. Rev. St. Ch. 37, Sec. 177) and reads as follows:

> "*Concurrent jurisdiction with Circuit Court in certain cases.* §The County Courts have concurrent jurisdiction with the Circuit Courts in all that class of cases wherein justices of the peace now have or may hereafter have jurisdiction, where the amount claimed or the value of the property in controversy shall not exceed two thousand dollars ($2,000), concurrent jurisdiction in all cases of appeals from justices of the peace and police magistrates and in all criminal offenses and misdemeanors where the punishment is not imprisonment in the penitentiary or death."

In *School Inspectors of Peoria v. The People ex rel. Grove,* 20 Ill. 525, the Supreme Court expressly held that the County Court does not have jurisdiction in mandamus. Certainly the County Court has no jurisdiction in chancery. *McDonough v. Gage,* 357 Ill. 466, 470. For a discussion of the jurisdiction of Illinois County Courts, if this court feels it is pertinent, we refer to the recent cases of *Thayer v. Village of Downers Grove,* 369 Ill. 334, *People v. Harshbarger,* 296 Ill. App. 397 and *Roberts v. Village of Lyon,* 307 Ill. App. 36.

So uncertain is the enforcement of the remedy in the County Court that litigants in other cases have had to petition other courts within the state other than the County Court for relief when mandatory action was required in similar proceedings. For instance, *Price v. Board of Local Improvements,* 266 Ill. 299, the remedy for mandatory action was *exercised in a State court other than the court in which the improvement was pending.*

Citation of authority is unnecessary to the effect that where the remedy at law is uncertain that equity is the proper forum for relief, but apropos that point see *Dawson v. Kentucky Distilleries Company,* 255 U. S. Page 288, where this court said on page 296:

> "If the remedy at law be doubtful a court of equity will not decline cognizance of the suit."

and this court said in *Corporation Counsel of Oklahoma v. Cary,* 296 U. S. 452, 458:

> "An examination of the decisions of the Supreme Court of Oklahoma confirms the conclusions reached by the court below as to the uncertainty with which it was confronted and the consequent lack of effective judicial remedy in the State courts."

This court went on to say on the same page that the District Court did not abuse its discretion in issuing an injunction.

Because of the uncertainty of the jurisdiction of the County Court to grant relief where the local Board refuses to file a certificate of completion, and because the Local Improvements Act contemplates that mandatory relief thereunder may be requested in any court to compel the filing of the certificate, your respondent submits that a Federal Court of Equity is a proper forum for relief in this case.

(3) A state statute cannot reduce the remedial right to proceed in the Federal Courts.

The petitioners lay much stress upon the proposition that granting respondent relief in the Federal court will result in deciding questions of local law in such courts contrary to the decisions of the State courts. The petitioners on this point erroneously regard the respondent's remedy for what they claim are the respondent's substantive rights. That the states cannot limit the remedies afforded in Federal Courts of Equity is settled beyond question as stated in *Guffy v. Smith*, 237 U. S. Page 101, 114:

> "By legislation of Congress and repeated decisions of this court, it has long been settled that the remedies afforded and modes of proceeding pursued in the Federal courts, sitting as courts of equity, are not determined by local laws and rules of decision, but by general principles, rules and usages of equity having uniform operation in those courts wherever sitting."

Nor will granting relief to respondent by the Federal court have the effect of creating a conflict between the State of Illinois and its courts and the Federal courts. The respondent believes that had it made application for relief to an Illinois State court sitting in equity on the basis of its Bill of Complaint in this cause, that it would have been entitled to the relief prayer for. The respondent elected, as it had the right to, because of diversity of citizenship and amount in controversy being over three thousand dollars, to apply for relief in the Federal District Court rather than a court of equity in the State of Illinois. The petitioners do not maintain that on the basis of the relief requested by the respondent it would have no right to apply for relief in a court of equity in the State court. Therefore, does it not follow that as the respondent has the right to apply to a State court sitting in equity that it would also be entitled to apply for relief in a Federal court in equity if the jurisdictional requisites are present.

(4) A Federal court in equity has jurisdiction when the remedy in the State court at law is incomplete, inadequate, and does not render full relief.

Respondent maintains that not only is such remedy as it may have in the County Court at law uncertain, as hereinbefore pointed out, but even if that remedy were certain, it would not afford the respondent full, complete and adequate relief. Validation of its bonds is only part of the relief the respondent claims to be entitled to. Accounting for assessments collected by the City of North Chicago is another phase of the relief respondent claims to be entitled to. Damages for loss of interest to the respondent from 1924 until such time as the respondent's bonds may be validated is another part of the relief respondent claims to be entitled to and damages for the conspiracy against the respondent is another part of the relief that respondent maintains should be granted. Obviously, the Local Improvements Act does not afford such remedy nor has the County Court the jurisdiction to entertain such request for relief. As stated in the case of *Tyler v. Savage*, 143 U. S. 79, 95:

> "Under Section 723 of the revised statutes, the remedy at law, in order to exclude equity, must be practical, and as efficient to the ends of justice and its prompt administration, as the remedy in equity."

B

Petitioners lay stress upon the proposition that a Federal court in equity should not interfere in this case because to do so would be to disregard the rightful independence of the State courts in carrying out their own domestic policies. The petitioners for their authority cite:

> *Penn General Casualty Co. v. Pennsylvania*, 294 U. S. 189, 197;
>
> *Railroad Commission v. Pullman Company*, 312 U. S. 496;
>
> *Kelleam v. Maryland Casualty Company*, 312 U. S. 377

as well as other cases along this same line.

Under this line of authority it should be noted that this court held that a Federal District Court should decline jurisdiction *because there was an adequate remedy within the state agency court or body.*

For instance, the case of *Penn General Casualty Company v. Pennsylvania,* 294 U. S. 189, involved the dispute between the jurisdiction of the State and Federal District Courts and the Insurance Commissioner of Pennsylvania over the liquidation of the business of the Pennsylvania General Casualty Company an insolvent Pennsylvania insurance corporation.

In that case a Bill of Complaint was pending against the company in the District Court for Eastern Pennsylvania, the Attorney-General of the State of Pennsylvania, acting pursuant to Section 502 of the Insurance Department Act, filed a suggestion in the State court alleging that the company was in a financially unsound condition and prayed for an order permitting the assets of the company to be taken into possession of the Insurance Commissioner for liquidation. This court in that case stated (p. 197):

> "Although the District Court has thus acquired jurisdiction, the end sought by the litigation in the State court is the liquidation of a domestic insurance company by a state officer. *In the absence of a showing that the interests of creditors and shareholders would not be adequately protected by this procedure, the case was a proper one for the District Court, in the exercise of judicial discretion to relinquish the jurisdiction in favor of the administration by the state officer.*" (Italics ours.)

The aforementioned case is of further interest in the following respect in which the court said:

> "Where the judgment sought is strictly in personam, for the recovery of money or for an injunction compelling or restraining action by the defendant, both a State court and a Federal court having concurrent jurisdiction may proceed with the litigation, at least until judgment is obtained in one court which may be set up as res judicata in the other. See Buck v. Colbath, supra (3 Wall 342, 18 L. Ed. 260): Kline v. Burke Construction Company, 260 U. S. 266, 67 L. Ed. 226, 43 S. Ct. 79, 24 R. L. R. 1077, and cases cited at pages 230, 231. But if the two suits are in rem or quasi in rem, requiring that the court or its officer have possession or control of the

> property which is the subject of the suit in order to proceed with the cause and to grant the relief sought, the jurisdiction of one court must of necessity yield to that of the other. To avoid unseemly and disastrous conflicts in the administration of our dual judicial system * * *"

From the foregoing it would seem that there would be no conflict in that respect in this case between the State and Federal courts because the subject matter of the respondent's complaint is in personam rather than in rem.

In *Kelleam v. Maryland Casualty Company*, 312 U. S. 377, the Federal District Court appointed a receiver over certain property involved in an estate proceeding pending in the State court. This court in dismissing the bill filed by the Maryland Casualty Company said (page 381):

> "* * * Furthermore, from all that appears, the surety (Maryland Casualty Company) could be adequately protected in the cause pending in the Oklahoma court by provisional remedies or otherwise."

The case of *Railroad Commission of Texas v. Pullman Company*, 312 U. S. 496, is further indicative that where there is adequate remedy within the state body, a Federal court will decline to assume jurisdiction in order to prevent conflict between the Federal and State courts. This court in its opinion in that case said (page 501):

> "The law of Texas appears to furnish easy and ample means for determining the commission's authority * * *. In the absence of any showing that these obvious methods for securing a definitive ruling in the State courts cannot be pursued with full protection of the constitutional claim, the District Court should exercise its wise discretion by staying its hands * * *."

In any event there will be no interference between the County Court in which the assessment proceeding is pending and the Federal District Court. If that part of the relief requiring the Board of Local Improvements to file the certificate of completion with the County Court is granted, the

County Court can then proceed to a hearing leading to ultimate validation of its bonds.

* * * *

It is, therefore, submitted that this case is not a proper one for review by certiorari in this court and that the petition for writ of certiorai should be denied.

Respectfully submitted,

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